



BEFORE THE MADURAI BENCH OF MADRAS HIGH COURT

DATED : 21.12.2017

CORAM:

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**THE HONOURABLE MR.JUSTICE M.VENUGOPAL
AND
THE HONOURABLE MRS.JUSTICE R.THARANI**

W.P.(MD)No.23597 of 2017

and

W.M.P(MD)Nos.19857 and 19858 of 2017

Agastheeswaram Oor Vagai Arulmigu Kulaskara
Vinayagar Koil Aranilayam,
Rep. by its Trustee Mr.S.Karunakaran,
Sudalaimadan Koil,
Agastheeswaram,
Agastheeswaram Post,
Kanyakumari District.

: Petitioners

.vs.

1.The Assistant Divisional Engineer(Highways),
O/o. Building and Maintenance Office,
Nagerkoil,
Kanyakumari District.

2.Mr.K.Vetrivendan,
The Secretary,
District Youth Representative of Dravida Kalaga
Christhu Nagar,
Vellamadam Post,
Kanyakumari District.

: Respondents

PRAYER: Writ Petition filed under Article 226 of the Constitution of India praying this Court for issuance of a Writ of Certiorari to call for the records pertaining to the impugned notice in letter No.Ka.11/2017/A1 dated 13.11.2017 on the file of the first respondent and quash the same as illegal.

For Petitioners : Mr.T.Lajapathi Roy

For R-1 : Mr.M.Govindan,
Special Government Pleader
(For R-2, notice is dispensed with)



O R D E R

[Order of the Court was made by M.VENUGOPAL, J.]

The Petitioner has preferred the instant Writ Petition praying for passing of an order by this Court in calling for the records pertaining to the impugned notice in letter No.Ka.11/2017/A1 dated 13.11.2017 on the file of the First Respondent and quash the same as illegal.

2. Heard the Learned Counsel for the Petitioner and the Learned Special Government Pleader for the First Respondent.

3. To avoid and avoidable delay, notice to the Second Respondent is dispensed with.

4. According to the Petitioner, the Second Respondent sent a communication dated 14.10.2015 and 14.07.2016 to the First Respondent stating that the Temple land belongs to State Highways Department. As a matter of fact, the First Respondent had called the Petitioner to attend an enquiry on 13.11.2017 and sought further details about the Temple land. It is not in dispute that the Petitioner had submitted his explanation on 16.11.2017.

5. The stand taken by the Petitioner is that 'A-Register' shows that the Temple land is described as Government Poramboke land and that the land does not belong to the Highways Department. Furthermore, it is represented on behalf of the Petitioner that the Temple was constructed before the road facility in that area and after such Temple construction, the road facility had developed in that area.

6. The legal plea taken on behalf of the Petitioner is that the First Respondent is not empowered to pass the impugned order dated 13.11.2017, because, the Temple land is not under the control of the State Highways Department. Moreover, it is the stand of the Petitioner that the Temple land is a Government Poramboke land and the relevant 'A Register' was submitted before the First Respondent at the time of objection being filed by the Trustee before the Latter.

7. Admittedly, the Petitioner's Objection/Representation/Remarks dated 16.11.2017 for the impugned notice dated 13.11.2017 issued by the First Respondent till date has not seen the light of the day. To put it differently, there is no progression in the subject matter in issue after filing of objection by the Petitioner on 16.11.2017.

8. The Learned Counsel for the Petitioner adverts to the ingredients of Section 8 of the Tamil Nadu Highways Act, 2001, which reads as under:



"8. Power to fix highway boundary, building line, control line etc.- (1) The Highways Authority of any division may, by notification, in relation to any highway or any are in that division, where the construction or development of a highway is undertaken or proposed to be undertaken, fix-

(a) the highway boundary, building line, or control line; or

(b) the highway boundary and the building line; and

(c) the building line and the control line:

Provided that before the publication of the notification under this sub-section, a draft of the said notification shall be published inviting objections, if any on the proposed fixation.

(2) The draft of the notification under sub-section (1) shall contain -

(a) all details of lands situated between the highway boundary line and control line proposed to be fixed and in the case of new works, the lands and persons benefited by the construction or development of such highway; and

(b) notice requiring all persons likely to be affected by such notification, to make their objections or suggestions, if any, in writing, with respect to the issue of such a notification, to the Highways Authority within such period as may be prescribed.

(3) After considering the representation, if any, received under sub-section (2), the Highways Authority may, with the approval of the State Highways Authority -

(i) drop the proposal to fix the highway boundary, the building line or the control line; or

(ii) publish the final notification under sub-section (1) with such modifications as may be considered necessary.

(4) Notwithstanding anything contained in sub-sections 91), (2) and (3), the Government may, in consultation with the State Highways Authority, having regard to the situation or the requirements of any highway or the conditions of the area through which such highway passes, -

(a) fix different building line and control line for such highway ; or

(b) refrain from fixing the building line or control line for such highway or portion thereof."

9. Besides the above, the Learned Counsel for the Petitioner refers to Section 28(2) of the Tamil Nadu Highways Act, 2001 under the caption 'Prevention of encroachment', wherein it is observed as under:



"28(2). The Highways Authority or any person authorised by it in this behalf, may -

(i) remove, without any notice, any movable temporary structure, enclosure, stall, booth, any article whatsoever hawked, exposed or displayed for sale or any other thing whatsoever by way of encroaching the highway or in any area where the construction or development of a highway is undertaken or proposed to be undertaken;

(ii) remove any immovable structure, whether permanent or temporary in nature, encroaching the highway or in the area vested with Government under this Act, after issuing a show cause notice against such removal, returnable within a period of seven days from the date of receipt thereof:

Provided that any representation received within the time limit shall be considered by the authority or officer concerned before passing final orders."

10. In view of the fact that the Petitioner's Objection dated 16.11.2017 is pending consideration in the hands of the First Respondent and this Court taking note of the fact that no final orders have been passed by the First Respondent in the subject matter in issue, at this stage, without going into the merits and demerits of the subject matter in issue, simpliciter, directs the First Respondent to take up the Objection of the Petitioner, dated 16.11.2017, within a period of one week from the date of receipt of a copy of this order. Thereafter, the First respondent after looking into the Objection of the Petitioner dated 16.11.2017 with all seriousness and earnestness, is to pass a reasoned speaking order ascribing reasons thereto in a qualitative and quantitative manner, of course after providing necessary opportunity to the Petitioner and others concerned if any, within a period of four weeks thereafter.

11. It is open to the Petitioner to raise all factual and legal pleas before the First Respondent, who shall advert to each and every point raised by the Petitioner and to answer the same in a complete and comprehensive manner.

12. It cannot be gainsaid that the First Respondent is to pass a final order in the subject matter in issue in an unbiased/impartial and in a dispassionate fashion, within the time adumbrated by this Court as stated supra. Till final orders are passed by the First Respondent within the time afore stated, the Petitioner's possession in the subject is not to be interfered with or disturbed by anyone in whatsoever manner.



13. With the above said observation(s) and direction(s), the Writ Petition stands disposed of. No costs. Consequently, connected Writ Miscellaneous Petitions are closed.

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/True Copy/

Sd/-
Assistant Registrar(CSI)

Sub-Assistant Registrar

To

The Assistant Divisional Engineer(Highways),
O/o. Building and Maintenance Office,
Nagerkoil,
Kanyakumari District.

+One cc to The Special Government Pleader, SR.No.94778

+One cc to Mr.T.Lajapathi Roy, Advocate, SR.No.94390

pm
RL/4C/5P/SKN/RSK/SAR1/5/1/2018

ORDER MADE IN

W.P. (MD) No.23597 of 2017

21.12.2017